SINGLE BENCH

(2)

CF 1002

(4)

BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION (C) NO. 88 /2007

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA.

PETITIONER (DEF NO.1)	Smt. Anuradha @ Anuradha Thakur, aged about 26 years, wife of Shri Thakur Surendra Singh, resident of Dayalband, Near Bhatkhande Music University, Bilaspur, Tahsil and Distt. Bilaspur (C.G.)

P.R. No. 33502
Presented Sankalp Jaiswal
10/1/07

VERSUS

RESPONDENTS PLAINTIFF	1.	S. Venket Raman, aged about 35 years, son of Shri Prabhakar Rao, R/o. Tilak Nagar (Near Congress Bhawan), Tah. & Distt. Bilaspur (M.P.) (Now C.G.)
DEFEN NO.2	2.	S. Prabhakar Rao, aged about 67 years, son of Late Shri S. Venket Rao, R/o. Tilak Nagar, Near Congress Bhawan, Tah. & Distt. Bilaspur (M.P.) (Now C.G.)

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(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C) No. 88 **सन् 2007**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

23.01.2007

Shri Ali Asgar, learned counsel for the petitioner.

This petition is directed against the order of Annexure P/5 passed by learned Fourth Civil Judge, Class-I, Bilaspur whereby preliminary objection of the plaintiff and defendant No. 2 with respect to the counterclaim preferred by defendant No. 1 has been allowed and the counterclaim of defendant No. 1 has been held not maintainable.

Learned counsel for the petitioner submits that the plaintiff had filed a civil suit for declaration and perpetual injunction with the plaint allegations that the gift deed executed by their father in favour of the petitioner is not enforceable. In the above suit, the petitioner/defendant No.1 has filed a counterclaim for declaration and perpetual injunction to the effect that the petitioner is the owner of 1/3rd share of the property apart from the subject matter of the suit. The counterclaim has been rejected on the ground that since it has been set up with respect to the property which is other

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than the subject matter of the suit, it is not maintainable under Order 8 Rule 6(A) of the C.P.C. and that it has been set up after six years from the filing of written statement, which is not permissible.

I have heard learned counsel for the petitioner and perused the impugned order as also the counterclaim preferred by the petitioner/defendant No.1.

Taking into consideration the fact that the counterclaim pertains to a property which is not the subject matter of the pending suit and further considering the fact that the same has been preferred after six years from the filing of written statement by the plaintiff, no jurisdictional error has been committed by the Court below which calls for interference under Article 227 of the Constitution of India.

With the aforesaid observations, the petition deserves to be dismissed at the admissions stage itself and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge

P.T.O.